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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

CONCEPCION FLORES individually *and on*)
behalf of all other employees similarly situated)
)
) *Plaintiff,*

**FLSA COLLECTIVE ACTION
COMPLAINT**

-v-)
LUNA'S RESTAURANT INC. (LUNA'S)
MEXICAN RESTAURANT) ELVIA LUNA)
AND IRAIS TELLEZ) jointly *and severally.*)
)

COLLECTIVE ACTION

UNDER 29 U.S.C. § 216(b)

Defendants.

NATURE OF THE ACTION

1. Plaintiff Concepcion Flores brings this action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et. seq.* in order to remedy Defendants' wrongful withholding of her lawfully earned wages and overtime compensation. Plaintiff also brings these claims under New York Labor Law ("NYLL"), Article 6, §§ 190 *et. seq.*, as well as the supporting New York State Department of Labor Regulations for violations of overtime compensation requirements, and failure of Defendants to comply with notice and record-keeping requirements. Defendants engaged in their unlawful conduct pursuant to a corporate policy of minimizing labor costs and denying employees compensation by knowingly violating the FLSA and NYLL. Defendants' conduct extended beyond the Plaintiffs to all other similarly situated employees. Plaintiffs seeks

1 certification of this action as a collective action on behalf of herself individually and those other
2 similarly situated employees and former employees of Defendants pursuant to 29 U.S.C. § 216(b).

3 4 **SUMMARY**

5 2. Plaintiff was employed by Defendants, ELVIA LUNA AND IRAIS TELLEZ,
6 LUNA'S RESTAURANT INC. (DBA LUNA'S MEXICAN RESTAURANT) (collectively
7 "Defendants"), as a kitchen worker from November 2016 until on or about end of November 2019.

8
9 3. Throughout the course of her employment, Plaintiff worked anywhere from 47 to
10 55 hours per week and was paid at a flat fee of \$35 per day.

11 4. Plaintiff was not paid at an overtime rate of one-and-one-half her regular rate of
12 pay for the overtime hours that he worked nor was she paid at the minimum wage.

13 14 **JURISDICTION AND VENUE**

15 **Federal Question Jurisdiction and Supplemental Jurisdiction**

16 5. This Court has original subject matter jurisdiction over this action under 28 U.S.C.
17 § 1331 because the civil action herein arises under the laws of the United States, namely, the Fair
18 Labor Standards Act and 29 U.S.C. §201 *et seq.* Additionally, this Court also has supplemental
19 jurisdiction over Plaintiffs' state law claims under 28 U.S.C. §1367(a).

20 21 **Personal Jurisdiction**

22 6. This Court may properly maintain personal jurisdiction over Defendants under Rule
23 4 of the Federal Rules of Civil Procedure because Defendants' contacts with this state and this
24 judicial district are sufficient for exercise of jurisdiction over Defendants so as to comply with
25 traditional notions of fair play and substantial justice.

26 27 **Venue**

1 interstate commerce. Additionally, LUNA'S RESTAURANT INC conducted business with
2 vendors and other businesses outside the State of New York and engaged in credit card
3 transactions involving banks and other institutions outside the State of New York.

4 15. Upon information and belief, at all relevant times, Luna's Restaurant Inc
5 annual gross volume of sales made, or business done, was not less than Five Hundred Thousand
6 Dollars (\$500,000.00) exclusive of separate retail excise taxes, within the meaning of the FLSA,
7 29 U.S.C. § 203(s)(1)(A)(ii).
8

9 **Individual Defendants**

10 **ELVIA LUNA**

11 16. Upon information and belief, at all relevant times throughout Plaintiff's employment,
12 ELVIA LUNA was an owner, authorized operator, manager, and agent of the Corporate
13 Defendant.
14

15 17. At all relevant times throughout Plaintiff's employment, Individual Defendants and
16 Corporate Defendants were joint employers of the Plaintiff, acted in the interest of each other
17 with respect to employees, and had common policies and practices as to wages and hours,
18 pursuant to 29 CFR § 791.2.
19

20 18. At all relevant times throughout Plaintiff's employment, Individual Defendant Luna
21 had the discretionary power to create and enforce personnel decisions on behalf of the
22 Corporate Defendant, including but not limited to: hiring and terminating employees;
23 setting and authorizing issuance of wages; maintaining employee records; setting
24 Plaintiff's and other employees' schedule; negotiating Plaintiff's rate of pay; instructing,
25 supervising and training Plaintiff; and otherwise controlling the terms and conditions for the
26 Plaintiff while she was employed by Defendants.
27
28

1 19. At all relevant times throughout Plaintiff's employment, Individual Defendants were
2 actively involved in the day-to-day operations of Corporate Defendant.

3 20. At all relevant times throughout Plaintiff's employment, Individual Defendant was a
4 "covered employer" within the meaning of the FLSA, the NYLL, the HRL, and the NYCHRL,
5 and employed or jointly employed Plaintiff, and is personally liable for the unpaid wages and
6 other damages sought herein, pursuant to 29 U.S.C. § 203(d), NYLL § 2, N.Y. Executive Law §
7 296(6), and N.Y. Admin. Code § 8-107(6).
8

9 **IRAIS TELLEZ (AKA ROCIO)**

10 21. Upon information and belief, at all relevant times throughout Plaintiff's employment,
11 Irais Tellez (AKA Rocio) was one of the owners, authorized operators, managers, and agents of
12 the Corporate Defendant.
13

14 22. At all relevant times throughout Plaintiff's employment, Individual Defendant and
15 Corporate Defendant were joint employers of the Plaintiff, acted in the interest of each other
16 with respect to employees, and had common policies and practices as to wages and hours,
17 pursuant to 29 CFR § 791.2.
18

19 23. At all relevant times throughout Plaintiff's employment, Individual Defendant Tellez
20 had the discretionary power to create and enforce personnel decisions on behalf of the Corporate
21 Defendant, including but not limited to: hiring and terminating employees; setting and
22 authorizing issuance of wages; maintaining employee records; setting Plaintiff's and other
23 employees' schedule; negotiating Plaintiff's rate of pay; instructing, supervising and training
24 Plaintiff; and otherwise controlling the terms and conditions for the Plaintiff while she was
25 employed by Defendants.
26

27 24. At all relevant times throughout Plaintiff's employment, Individual Defendant was
28

1 actively involved in the day-to-day operations of Corporate Defendant.

2 25. At all relevant times throughout Plaintiff's employment, Individual Defendant was a
3 "covered employer" within the meaning of the FLSA, the NYLL, the HRL, and the NYCHRL,
4 and employed or jointly employed Plaintiff, and is personally liable for the unpaid wages and
5 other damages sought herein, pursuant to 29 U.S.C. § 203(d), NYLL § 2, N.Y. Executive Law §
6 296(6), and N.Y. Admin. Code § 8-107(6).
7

8 **Corporate Defendant**

9 26. LUNA'S RESTAURANT INC. (hereinafter "Defendant Corporation") is a domestic
10 business corporation organized and existing under the laws of the state of New York.
11 LUNA'S RESTAURANT INC., owns and operates a restaurant called LUNA'S MEXICAN
12 RESTURANT located at 43-13 Broadway, Astoria, NY 11103
13

14 27. At all relevant times, Defendant Corporation maintained control, oversight, and
15 direction over the Plaintiffs, including timekeeping, payroll, and other employment practices that
16 applied to them.
17

18 28. At all relevant times, Defendant Corporation was an employer engaged in interstate
19 commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29
20 U.S.C. §§ 206(a) and 207(a) and employed Plaintiffs within the meaning of the FLSA.
21

22 29. At all relevant times, Defendant Corporation used goods and materials produced in
23 interstate commerce, such as food and food ingredients manufactured out of state and distributed
24 in New York and employed numerous individuals who handled these goods and materials.

25 30. At all relevant times, Plaintiff was employed by Defendant Corporation within the
26 meaning of the NYLL §§ 2 and 651.
27

28 31. Upon information and belief, at all relevant times, Defendant Corporation annual

gross volume of sales made, or business done, was not less than Five Hundred Thousand Dollars (\$500,000.00) exclusive of separate retail excise taxes, within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(A)(ii).

FACTUAL ALLEGATIONS

Plaintiff Concepcion Flores

32. Plaintiff Flores was formerly employed by Defendants from in or around November 2016 until on or about end of November 2019.

33. Plaintiff regularly handled goods in interstate commerce throughout the course of her employment with Defendants, such as food, food ingredients and drinks, produced or manufactured out of state and distributed in New York.

34. Throughout her employment, Plaintiff was a waitress, serving beverages to Customers in the night shift.

35. At the time of her hiring, Individual Defendant agreed to pay Plaintiff a salary of \$35 per day for her work as a waitress/dancer.

36. Individual Defendants also agreed with Plaintiff that her schedule would six days per week, Wednesday through Sunday from 11:00 pm until 9:00 am and Mondays from 11:00 pm until 6:00 am or fifty (50) hours per week.

37. Throughout the duration of her employment, Plaintiff did not have any supervisory authority, nor did she exercise discretion or independent judgment with respect to matters of significance.

38. Plaintiffs never had any managerial duties, such as hiring and firing employees, doing payroll and setting employees' hours of work.

Defendants' Unlawful Corporate Practices

1 39. Defendants required Plaintiff to work and never compensated them at all for her
2 work.

3 40. Plaintiff was never provided with any wage statements, time sheets, or other
4 documents showing the amount of hours they each worked every week and the amounts they
5 were owed.

6 41. Plaintiff was not provided with a wage notice at the time of hire or at any point
7 thereafter.

8 42. Upon information and belief, while Defendants employed Plaintiff, they failed to post
9 notices explaining the minimum and overtime wage rights of employees under the FLSA and
10 NYLL and failed to inform Plaintiff of such rights.

11 43. Defendants repeatedly suffered or permitted Plaintiff to work in excess of forty (40)
12 hours per week without paying them the appropriate premium overtime pay of one and one-half
13 times the statutory minimum wage.

14 44. Defendants paid Plaintiff Vera a flat daily rate for all her hours of work

15 45. Defendants willfully disregarded and purposefully evaded record-keeping
16 requirements of the FLSA and NYLL by failing to maintain accurate and complete timesheets
17 and payroll records.

18 46. Plaintiff was never provided with a wage notice at the time of hire or at any point
19 thereafter, noting her hourly wage increases.

20 47. Upon information and belief, while Defendants employed Plaintiff, they failed to
21 post notices explaining the minimum and overtime wage rights of employees under the FLSA
22 and NYLL and failed to inform Plaintiffs of such rights.

23 48. Plaintiffs has personal knowledge of other employees of Defendants who are
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1 similarly situated and who also worked hours for which they were not paid minimum and
2 overtime wages.

3 **COLLECTIVE ACTION ALLEGATIONS**

4 49. Pursuant to 29 U.S.C. §§ 203, 206, 207, and 216(b), Plaintiffs brings her First and
5 Second causes of action as a collective action under the FLSA on behalf of themselves and the
6 following collective:
7

8 All persons employed by Defendants at any time from November 12, 2019 to the present day
9 (the “Collective Action Period”) who worked as non-exempt employees of the Defendants (the
10 “Collective Action Members”).

11 50. A collective action appropriate in these circumstances because Plaintiffs and the
12 Collective Action Members are similarly situated, in that they were all subject to Defendants’
13 illegal policies of failing to pay wages at or above the statutory minimum and failing to pay
14 overtime wages for all hours worked above 40 hours per week.
15

16 51. Plaintiffs and the Collective Action Members have substantially similar job duties
17 and are paid pursuant to a similar, if not the same, payment structure.
18

19 52. The claims of the Plaintiffs stated herein are similar to those of the other employees.

20 **FIRST CAUSE OF ACTION**

21 **Fair Labor Standards Act – Violation of Minimum Wage Requirements**
22 **(Brought on Behalf of Plaintiffs and the Collective Action Members)**

23 53. Plaintiffs, on behalf of themselves and the Collective Action Members, reallege and
24 incorporates by reference all allegations made in all preceding paragraphs as if fully set forth
25 herein.
26

27 54. Defendants, throughout the majority of their employment period, paid Plaintiffs and
28 the Collective Action Members in amounts below the applicable statutory minimum wage for

1 their hours worked, in violation of the FLSA, 29 U.S.C. § 206.

2 55. Defendants' unlawful conduct, as described in this Complaint, has been willful and
3 intentional. Defendants were aware, or should have been aware, that the practices described in
4 this Complaint were unlawful. Accordingly, a three-year statute of limitations applies pursuant
5 to 29 U.S.C. § 255(a).
6

7 56. As a result of the Defendants' violations of the FLSA, Plaintiffs, and the Collective
8 Action Members have suffered damages by being denied wages at or exceeding the statutory
9 minimum in accordance with the FLSA in amounts to be determined at trial and are thus entitled
10 to recovery of such amounts, liquidated damages, attorneys' fees, costs, and other compensation
11 pursuant to 29 U.S.C. § 216 (b).
12

13 **SECOND CAUSE OF ACTION**

14 **Fair Labor Standards Act – Unpaid Overtime Wages** 15 **(Brought on Behalf of Plaintiffs and the Collective Action Members)**

16 57. Plaintiffs, on behalf of themselves and the Collective Action Members, realleges and
17 incorporates by reference all allegations made in all preceding paragraphs as if fully set forth
18 herein.
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20 58. Defendants failed to pay Plaintiffs and the Collective Action Members appropriate
21 overtime wages for all hours worked above 40 hours per week thereby violating the FLSA, 29
22 U.S.C. § 207(a)(1) at a rate of one- and one-half times their regular rate of pay, but under no
23 circumstances, below one- and one-half times the statutory minimum wage.
24

25 59. Defendants' unlawful conduct, as described in this Complaint, has been willful and
26 intentional. Defendants were aware, or should have been aware, that the practices described in
27 this Complaint were unlawful. Accordingly, a three-year statute of limitations applies pursuant
28 to 29 U.S.C. § 255(a).

SIXTH CAUSE OF ACTION

New York Labor Law – Failure to Provide Notice at Time of Hiring

68. Plaintiffs realleges and incorporates by reference all allegations in all preceding paragraphs.

69. Defendants failed to provide Plaintiffs at the time of hiring or at any point thereafter, a notice containing the rate of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; the regular pay day designated by the employer; the physical address of the employer's main office or principal place of business; the telephone number of the employer, and anything otherwise required by law, in violation of NYLL § 195(1).

70. Due to Defendants' violations of the NYLL § 195(1), Plaintiffs is entitled to recover from Defendants statutory damages of Fifty dollars (\$50) per workday that the violation occurred, up to a maximum of Five Thousand Dollars (\$5,000) pursuant to NYLL § 198 (1-b).-judgment interest, damages for emotional distress, attorney's fees, costs, and other such damages of an amount to be determined at trial, pursuant to N.Y. Executive Law § 297(9).

71. Defendant Tellez is jointly and severally liable for the aforementioned damages, since he incited, compelled and coerced the above discriminatory and unlawful conduct pursuant to N.Y. Executive Law § 296(6).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

A. Issuance of a declaratory judgment that the practices complained of in this complaint are unlawful under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, New York Labor Law, Article 19, §§ 650 *et seq.*, and supporting New York State Department of Labor Regulations, the New York Executive Law § 296, and the N.Y. Administrative Code. §§ 8–107;

B. Unpaid minimum wages and overtime pay under the FLSA and an additional and equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b) and the supporting United States Department of Labor Regulations;

C. Unpaid minimum and overtime wages under NYLL, and an additional and equal amount as liquidated damages pursuant to NYLL §198(1-a) and § 663(1);

D. Civil penalties of One Thousand One Hundred Dollars (\$1,100.00) for each of Defendants' willful and repeated violations of the FLSA pursuant to 29 U.S.C. § 216(b);

E. An award of statutory damages for Defendants' failure to provide Plaintiff with a wage notice at the time of hiring, or at any point thereafter, pursuant to NYLL § 198 (1-b);

F. An award of statutory damages for Defendants' failure to provide Plaintiff with wage statements, pursuant to NYLL § 198 (1-d);

G. An award of back wages, front wages, liquidated damages, damages for emotional distress, and punitive damages for the Defendants' prohibited retaliation against Plaintiff pursuant to 29 U.S.C. § 215(3);

H. A civil penalty of a maximum of Ten Thousand Dollars (\$10,000.00) for Defendants' prohibited retaliation against Plaintiff pursuant to 29 NYLL § 215(1)(b);

1 I. A permanent injunction requiring Defendants to pay all statutorily required wages
2 pursuant to the FLSA and NYLL;

3 J. If liquidated damages pursuant to FLSA, 29 U.S.C. § 216(b) are not awarded, an
4 award of prejudgment interest pursuant to 28 U.S.C. § 1961;

5 K. An award of pre-judgment interest of nine per cent per annum (9%) pursuant to
6 the New York Civil Practice Law and Rules §§ 5001-5004;

7 L. An award of post-judgment interest pursuant to 28 U.S.C. § 1961 and/or the New
8 York Civil Practice Law and Rules § 5003;

9 M. An award of attorney's fees, costs, and further expenses up to Fifty Dollars
10 (\$50.00), pursuant to 29 U.S.C. § 216(b), NYLL §§ 198 and 663(1), N.Y. Admin. Code § 8-
11 502(g); and
12

13 N. Such other relief as this Court shall deem just and proper.
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16
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18 Dated: New York, New York
19 December 7, 2019

20 Respectfully submitted,

21 **STILLMAN LEGAL PC**

22 /s/

23 By:

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